

Appl. No. 09/834/434
Supp. Amdt. dated Feb. 1, 2005
Reply to Office Action of Feb. 2, 2004

Docket No 3123-4008

REMARKS/ARGUMENTS

Applicants have included herewith a listing of claims to replace all prior versions. The listing presented here is identical to the listing filed on November 4, 2004, except that a new dependent claim 49 has been added. Support for claim 49 can be found throughout the specification, for example, on page 15, lines 1-11, and in original claim 31.

Applicants' representative gratefully acknowledges the Examiner's time and attention in conducting a telephone interview on January 14, 2005. During the interview, the rejections of the claims under 35 U.S.C. §§102 and 103 were discussed. The Examiner acknowledged that in view of the current claim amendments, Borchert et al. did not anticipate the claims, but requested more evidence with respect to the §103 rejection. The following remarks are submitted in response to the Examiner's request. Reconsideration is respectfully solicited.

REJECTION OF THE CLAIMS UNDER 35 U.S.C. §103

Further in response to the Examiner's rejection of the claims under 35 U.S.C. §103(a) as being unpatentable over Borchert et al., in view of Shuster, Applicants repeat that *neither* Borchert or Shuster teach or suggest the formation of transferable reproductive elements (e.g. hyphal fragments), or culturing the transformed mutant filamentous fungi under conditions conducive to formation of transferable reproductive elements in suspension, or the separation from one another a plurality of transferable reproductive elements, as recited in the claims.

Shuster teaches low-viscosity, highly branched mutants that produce pellets in suspension, not the reproductive elements of the present invention (See, for example, column 13, lines 50-53). Further, in Example 8 of the Shuster patent, the inventors use the highly branched mutants of Weibe et al. which also produce pellets. Thus, "hyphal branching" as taught by Shuster cannot be equated with the formation of hyphal fragments or the production of reproductive elements in suspension. As discussed on page 12, lines 29-32, of Applicants' specification, the filamentous fungi of the invention exhibit a morphology characterized by short, discrete, non-entangled hyphae, or micropellets (i.e. reproductive elements). The reproductive elements of the present invention are micropellets that are slightly- or

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non-entangled collections of hyphae arising from a single clone, as distinct from pellets which are much larger and are derived from multiple entangled clones. The Shuster reference teaches the latter. Accordingly, the Shuster patent, which only addresses low-viscosity cultures, does not teach or suggest the present invention, alone or in combination with Borchert. Applicants attach as Exhibits 1-3, three references which describe pellet morphology in more detail.

For the same reasons, there would have been no motivation to combine the teachings of Borchert and Shuster because the two references comprise non-overlapping subject matter, with no suggestion on the part of either to utilize the respective teachings to facilitate high-throughput screening.

In view of the remarks presented above, Applicants' respectfully request that the Examiner withdraw the rejection under 35 U.S.C. §103(a)

Applicants believe that the claims are currently in condition for allowance. Examination on the merits and passage to issue is respectfully requested.

Respectfully submitted,
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